

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF PUERTO RICO

MARIANA DEL PILAR MONTANEZ-
QUINONES

Plaintiff

CIVIL NO. 23-1270 (RAM)

v.

UNITED STATES DEPARTMENT OF
COMMERCE, *et al.*

Defendants

MEMORANDUM AND ORDER

RAÚL M. ARIAS-MARXUACH, United States District Judge

Plaintiff Mariana Del Pilar Montanez-Quinones ("Plaintiff") filed a *pro se* Complaint against her employer on May 26, 2023. (Docket No. 1). Plaintiff alleges that she suffered damages while performing her duties as an Enumerator of the New York Census Bureau. Id. at 2. Specifically, Plaintiff claims that while she was surveying an area, she parked her car on a very steep slope and the car started to move backwards. Id. Plaintiff asserts that as she "tried to get on the car to press the brake[,]” the car dragged and crushed her, scratching and bruising her body. Id. Plaintiff posits that because her employer assigned her to survey the area where the accident occurred, they are responsible for compensating her for the damages caused by said accident. Id. at 3-4.

On August 2, 2023, the Court issued the following order: "By August 31, 2023, Plaintiff shall show cause why the Complaint should not be dismissed pursuant to Fed. R. Civ. P. 12(b) (6) for failure to state a claim against Defendants upon which relief can be granted." (Docket No. 8). However, **Plaintiff failed to respond.**

Fed. R. Civ. P. 12(b) (6) allows a complaint to be dismissed for "failure to state a claim upon which relief can be granted." When ruling on a motion to dismiss under this rule, courts must determine whether "all the facts alleged [in the complaint], when viewed in the light most favorable to the plaintiffs, render the plaintiff's entitlement to relief plausible." Ocasio-Hernandez v. Fortuno-Burset, 640 F.3d 1, 14 (1st Cir. 2011).

Additionally, 28 U.S.C. § 1915(e) (2) (B) gives the Court the authority to dismiss a claim in forma pauperis on the grounds of it being either: frivolous or malicious; fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. A complaint is frivolous if "**lacks an arguable basis either in law or in fact**", one that contains either inarguable legal conclusions or fanciful factual allegations." Street v. Fair, 918 F.2d 269, 272-73 (1st Cir. 1990) (citations omitted) (emphasis added). Also, "the statute accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to

pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Neitzke v. Williams, 490 U.S. 319, 327 (1989).

District Court judges, in an exercise of the inherent authority to regulate their dockets, may rely upon Fed. R. Civ. P. 41 (b) when considering whether to involuntarily dismiss a case *sua sponte*. See García-Perez v. Hosp. Metropolitano, 597 F.3d 6, 7 (1st Cir. 2010); Malot v. Dorado Beach Cottages Assocs., 478 F.3d 40, 43 (1st Cir. 2007). The First Circuit has held that "a party's disregard of a court order is a paradigmatic example of extreme misconduct" which may warrant dismissal. Torres-Vargas v. Pereira, 431 F.3d 389, 393 (1st Cir. 2005). When a "court appropriately forewarns a plaintiff of the consequences of future noncompliance with an unambiguous order, the court need not exhaust less toxic sanctions before dismissing a case [.]" Id.

Upon reviewing Plaintiff's allegations, the Court is compelled to dismiss Plaintiff's *Complaint* for failing to state a claim upon which relief may be granted. Alternatively, the *Complaint* is dismissed for Plaintiff's failure to respond to the Court's order at Docket No. 8. Thus, Plaintiff's *Complaint* at Docket No. 1 is hereby **DISMISSED WITH PREJUDICE**. Judgment shall be entered accordingly.

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IT IS SO ORDERED.

In San Juan, Puerto Rico this 12th day of September 2023.

S/ RAÚL M. ARIAS-MARXUACH
United States District Judge